

March 2, 2006

To: Prequalified Consultant and Construction Firms

Subject: Public Act 05-287, §33(b)

As you are aware, Public Act 05-287, "An Act Concerning Government Administration" ("the Act"), was signed into law in July, 2005 and made significant changes in how and, in some circumstances, with whom state agencies may contract for certain purposes. On September 2, 2005, the Department of Transportation ("Department") mailed a notice to all prequalified consultant and construction firms, notifying them of the Department's interpretation of section 33(b) of the Act. This letter and its attachment supersede the September 2, 2005 letter in whole and are meant to clarify the Department's interpretation of Section 33(b).

Section 33(b) of the Act precludes firms from being involved in a state contract if that firm consulted with the state to plan specifications for the contract. This provision prohibits such a consulting firm from acting, with respect to said contract, as a contractor, a subcontractor or consultant to the contractor, or as a consultant to a party seeking said contract.

More particularly, the Act states:

(b) No person with whom a state agency, board, commission or institution or quasi-public agency has contracted to provide consulting services to plan specifications for any contract and no business with which the person is associated may serve as a consultant to any person seeking to obtain such contract, serve as a contractor for such contract or serve as a subcontractor or consultant to the person awarded such contract.

P.A. 05-287, §33(b).

Section 33(c) of that same Act provides that:

(c) Any person who violates any provision of this section may be deemed a nonresponsible bidder by a state agency, board, commission or institution or quasi-public agency.

The Act does not preclude subconsultants of the firm that consulted with the Department to plan specifications for a contract from participating in later phases of the project to which said contract related (except in the unusual case that the subconsultant firm is a "business with which the [consultant firm] person is associated") -- See Section 32 of the Act defining "business with which the person is associated." For that reason and due to the fact that the Department strives to prevent any firm from gaining an unfair advantage in the competitive selection process, by making project documents available upon request to any firm expressing an interest in working on a later phase, the Department will not preclude subconsultants who participated in an earlier phase of a project from participating in the next phase, unless a consultant Program

Management firm is involved. Please refer to the attachment, Public Act 05-287 Section 33(b) Frequently Asked Questions, for further clarification.

In accordance with the Act, should a violation of this Statute come to the Department's attention, the firm involved may be found to be a nonresponsible bidder/proposer. The firm may also be eliminated from the ongoing selection process or have its current contracts with the Department terminated.

Your attention to this matter is appreciated.

Sincerely,
Carl F. Bard, P.E.
Deputy Commissioner
Connecticut Department of Transportation

Attachment

Public Act 05-287 Section 33(b) Frequently Asked Questions

- Would a firm that contracted with the Department to do regional / general area planning studies not specific to a particular project be eligible for the preconstruction or construction phases of an assignment in that same area or corridor? *Yes, but if that firm then contracted with the Department to do the preconstruction phase of a specific project in that same area or corridor it would not be eligible for the construction phase of that specific project.*
- Would a firm that contracted with the Department to develop the scope of work for the next phase of a specific project be eligible for that next phase? *Yes, if the assignment is part of their existing scope of services as described in the Department's solicitation for services. No, if the next phase of the assignment will be going out for a new solicitation for services.*
- Would a firm that contracted with the Department to do the design phase or complete preconstruction phase of a particular project be eligible for the succeeding construction or construction inspection phase of that project? *No, the firm that contracted with the Department to prepare the contract documents for the construction phase of a project would not be eligible.*
- Is it permissible for firms that are seeking a construction or construction inspection contract with the Department to consult or subcontract with any "key project people" from the primary firm that prepared the contract documents for that specific project? *No, in keeping with the spirit of the Act, the Department expects that firms who are doing construction or construction inspection for the Department on a given project will not employ, consult or subcontract with any "key project people" from the primary firm that prepared the contract documents on that specific project.*
- What are "key project people"? *Key project people include, but may not be limited to, a firm's principals, project managers, deputy and assistant project managers, and senior engineers and architects.*
- Is it permissible for firms that are seeking a design contract with the Department to consult or subcontract with any "key project people" from the primary firm that worked on the planning phase that developed the purpose and intent / scope of services for that specific project? *No, again, in keeping with the spirit of the Act, the Department expects that a firm hired to do design work on a specific Department project will not employ, consult or subcontract with any "key project person" from the primary firm that worked on the project planning phase that developed the purpose and intent and/or the scope of services.*
- How will the Department's response to the Act affect projects where a consultant Program Management firm is involved? *While not necessarily required by the Act, the Department has decided, in order to avoid conflicts of interest, to employ the following additional restrictions where a consultant Program Management firm is involved:*
 1. *No firm will be allowed to simultaneously subcontract with the Program Management firm and also have a contract with the Department for one of the projects that the Program Management firm will be overseeing.*
 2. *No firm will be allowed to simultaneously subcontract with the Program Management firm and also subcontract with another firm that has a contract with the Department for one of the projects that the Program Management firm will be overseeing.*
 3. *No firm who subcontracts with the Program Management firm during the preconstruction phase of one of the projects will be allowed to work on the same aspect/element with another firm that has a contract with the Department for one of the projects that the Program Management firm will be overseeing during the construction phase.*
 4. *The Program Management firm will not be allowed to also have a contract or subcontract on any of the individual projects that the Program Management firm will be overseeing.*